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No.

Supreme Court, U.S.
FILED
DEC 30 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

OLIVER L. NORTH,
Petitioner,

v.

LAWRENCE E. WALSH, INDEPENDENT COUNSEL, and
EDWIN MEESE III, ATTORNEY GENERAL,
Respondents.

OLIVER L. NORTH,
Petitioner,

v.

EDWIN MEESE III, ATTORNEY GENERAL, and
LAWRENCE E. WALSH, INDEPENDENT COUNSEL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Dated: December 30, 1987

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the target of a federal criminal investigation being conducted in violation of the Constitution and laws of the United States is absolutely barred from seeking declaratory or injunctive relief from that investigation in federal court.

PARTIES TO THE PROCEEDINGS

Oliver L. North was a plaintiff in the district court, was an appellant in the court of appeals, and is the petitioner in this Court.

Lawrence E. Walsh, Independent Counsel, was a defendant in the district court, was an appellee in the court of appeals, and is a respondent in this Court.

Edwin Meese III, Attorney General, was a defendant in the district court, was an appellee in the court of appeals, and is a respondent in this Court.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
I. The Decision of the D.C. Circuit Conflicts With a Recent Decision of the Eleventh Circuit	6
II. The Decision of the D.C. Circuit Conflicts With This Court's Decision in *Steffel* v. *Thompson* and Radically Expands the *Younger* Doctrine of Equitable Restraint	11
CONCLUSION	17

TABLE OF AUTHORITIES

CASES: Page

Deaver v. *Seymour*, 822 F.2d 66 (D.C. Cir. 1987).. 4, 5, 6
Deaver v. *Seymour*, No. A-677 (March 18, 1987).. 14
Lake Carriers' Assn. v. *MacMullan*, 406 U.S. 498 (1972) 13
Olagues v. *Russoniello*, 797 F.2d 1511 (9th Cir. 1986) (*en banc*), *cert. granted*, 55 U.S.L.W. 3712, 107 S.Ct. 1885 (1987), *vacated and remanded*, 56 U.S.L.W. 3241, 108 S.Ct. 52 (1987).. 7, 8, 9, 10, 14
Russoniello v. *Olagues*, 55 U.S.L.W. 3712, 107 S.Ct. 1885 (1987) 7
Russoniello v. *Olagues*, 56 U.S.L.W. 3241, 108 S.Ct. 52 (1987) 7
Samuels v. *Mackell*, 401 U.S. 66 (1971) 12
Smith v. *Meese*, 821 F.2d 1484 (11th Cir. 1987).... 9, 10
Steffel v. *Thompson*, 415 U.S. 452 (1974) 6, 11, 13
Younger v. *Harris*, 401 U.S. 37 (1971) 11, 12, 13, 15, 16

STATUTES AND REGULATIONS:

Ethics in Government Act, 28 U.S.C. §§ 591 *et seq.* 2
28 C.F.R. Parts 600 and 601 4
Rule 12(b)(1), Fed. R. Crim. P. 5
Rule 19.4, Rules of the Supreme Court of the United States 6

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, Oliver L. North, respectfully prays that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the District of Columbia Circuit entered in these proceedings on October 1, 1987.

OPINIONS BELOW

The memorandum opinions and orders of the United States Court of Appeals for the District of Columbia Circuit are reprinted as Appendix A and Appendix B to this Petition. The opinion of the United States District Court for the District of Columbia is reprinted as Appendix C to this Petition.

JURISDICTION

The memorandum opinions and orders of the court of appeals affirming the district court's dismissal were entered on October 1, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner Oliver L. North is a principal target in the investigation by Independent Counsel Lawrence E. Walsh into the "Iran/Contra Affair." In this petition, he seeks review of the dismissal of two related but distinct civil actions challenging Mr. Walsh's investigative and prosecutorial authority. At issue here is the extent to which federal courts may safeguard citizens against federal criminal investigations that are alleged to be unlawful and unconstitutional.

On December 19, 1986, the Division for Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit entered an order pursuant to the independent counsel provisions of the Ethics in Government Act, 28 U.S.C. §§ 591-98 ("Ethics Act"), appointing Lawrence E. Walsh as independent counsel and defining his jurisdiction. Although the order of the special court identified broad categories of people subject to the investigation, it specifically identified only one individual, petitioner here, by name. On January 28, 1987, Mr. Walsh impaneled a grand jury. Since that time, he has served numerous

subpoenas and has identified petitioner as a target of his investigation.

On February 24, 1987, petitioner filed a complaint in the United States District Court for the District of Columbia seeking a declaratory judgment that the independent counsel provisions of the Ethics in Government Act are unconstitutional. (App. 26a) The suit named Independent Counsel Walsh and the Attorney General of the United States as defendants. The complaint alleged that the independent counsel and his staff were engaging in law enforcement activities without any authority to do so. Specifically, petitioner argued that he should not be subject to investigation by persons who, although without any lawful authority to act, were compelling disclosure of private information (including private tax information) about him, coercing subpoena compliance by persons in privity with him, disclosing confidential information in violation of grand jury secrecy provisions, and in numeorus other ways causing him serious and irreparable injury.

Petitioner sought no preliminary or temporary relief when he filed this complaint. Instead, because the complaint sought declaratory relief—and thereafter injunctive relief as appropriate—no interference with the independent counsel investigation was sought until after a considered determination on the merits.

On March 2, 1987, Independent Counsel Walsh filed a motion to dismiss the complaint asserting that petitioner's action constituted an impermissible collateral attack upon an ongoing criminal investigation; that the claims presented were premature and not ripe for adjudication; and that the independent counsel provisions of the Ethics Act are constitutional. The Attorney General similarly filed a motion to dismiss, joining Independent Counsel Walsh's procedural arguments and additionally maintaining that the petitioner lacked standing to challenge the Act's constitutionality.

At the same time, on March 5, 1987, in response to petitioner's court action, the Attorney General promulgated a new regulation, 28 C.F.R. Parts 600 and 601, purporting to establish an "Office of Independent Counsel: Iran/Contra" within the Department of Justice, and appointing respondent Walsh to head that office. The regulation authorized respondent to conduct an investigation of the same scope as the one that he was conducting under the Ethics Act. The following day, petitioner filed a second complaint in the United States District Court for the District of Columbia against the Attorney General and Independent Counsel Walsh (App. 42a) and charged that the enabling regulation promulgated by the Attorney General was "rife with constitutional and statutory infirmities." (App. 13a). The respondents each moved to dismiss that complaint as well.

The district court dismissed both complaints. Without any reference to the factual allegations in the complaints, such as improper disclosures of grand jury information, the court ruled in a single opinion that "plaintiff has not alleged a sufficient hardship to meet the ripeness standard and to warrant anticipatory judicial involvement in the ongoing criminal investigation." (App. 14a).

Petitioner appealed the dismissal of both complaints to the United States Court of Appeals for the District of Columbia Circuit. Respondent Independent Counsel Walsh moved for summary affirmance in reliance on that court's recent decision in *Deaver* v. *Seymour*, 822 F.2d 66 (D.C. Cir. 1987) (App. 70a). In *Deaver*, the court of appeals had considered the effort of former White House Deputy Chief of Staff Michael K. Deaver to win a preliminary injunction against a grand jury's return of an indictment the following day. Mr. Deaver had argued that he would be irreparably injured *by the indictment*, citing as injury the " 'continuing destruction of his business,' " " 'injury to his reputation and dignity,' " and " 'the expenditure of substantial resources in his de-

fense.'" *Deaver* v. *Seymour*, 822 F.2d at 72 (D. H. Ginsburg, J., concurring) (App. 83a). The court of appeals held that Rule 12(b)(1) of the Federal Rules of Criminal Procedure provided Mr. Deaver with an adequate non-injunctive remedy for injuries arising out of an indictment, by providing for dismissal of the indictment where appropriate.

Petitioner challenged the motion for summary affirmance on the ground that his claims arise in a different context from Mr. Deaver's, raise different issues and require a different result. In particular, petitioner argued that he does not complain of injury from a grand jury's return of an indictment, as had Mr. Deaver, but rather seeks a declaration that the independent counsel does not enjoy lawful authority, *inter alia*, to compel disclosure of personal information such as tax returns; to coerce compliance with subpoenas by persons in privity with petitioner; and to disclose confidential matters to the Congress and the public. Petitioner argued that each of those actions, and many others, injured and continues to injure his federally protected rights in a way that would not and could not be remedied by a dismissal of an indictment, should he be indicted, and which obviously might not be addressed if there were to be no indictment. Petitioner maintained that the court had either to conclude that the law somewhere provided an adequate remedy for the injuries alleged (as it had in the case of Mr. Deaver's injury arising out of an indictment) or that the injuries alleged were not cognizable. Neither issue was addressed by the *Deaver* panel.

Petitioner further argued that, unlike Mr. Deaver, he does not seek a preliminary injunction but rather a declaratory judgment and thereafter, if appropriate, permanent injunctive relief. Petitioner argued that there is no basis for assuming, on the basis of the *Deaver* holding, that the same standard that was applied in *Deaver* to a request for a preliminary injunction would apply to

a request for a declaratory judgment and cited this Court's holding in *Steffel* v. *Thompson*, 415 U.S. 452, 471 (1974).

Without even acknowledging these significant differences from *Deaver*, the court of appeals summarily affirmed the district court's dismissal of the two complaints in a two-paragraph opinion. (App. 1a, App. 3a). The court broadly ruled that petitioner

> "has impermissibly attempted to attack collaterally a pending criminal investigation through the maintenance of a separate civil action. It is clear, after *Deaver*, that potential criminal defendants 'cannot, by bringing ancillary equitable proceedings, circumvent federal criminal procedure.' [*Deaver v. Seymour*, 822 F.2d] at 71. Accordingly, because the order of the district court dismissing the complaint in this case was clearly correct, . . . we affirm."

App. 2a and App. 4a (citation omitted). The court of appeals did not address petitioner's core argument that the Rules of Criminal Procedure provide no remedy for the injury alleged in his complaints.[1]

REASONS FOR GRANTING THE WRIT

I. The Decision of the D.C. Circuit Conflicts With a Recent Decision of the Eleventh Circuit.

The rule adopted by the D.C. Circuit—that the subject of a federal grand jury investigation is absolutely barred from bringing a civil action to challenge the constitutionality of that investigation—conflicts directly with recent decisions of the Courts of Appeals for the Ninth Circuit (which subsequently was vacated) and the Eleventh Circuit allowing pre-indictment civil challenges to federal

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[1] Pursuant to Rule 19.4 of the Rules of this Court, this single petition seeks review of the two orders of the court of appeals, which involve identical or closely related issues.

criminal investigations. This Court previously determined that the issue presented by these cases is proper for review when it granted certiorari in the case arising in the Ninth Circuit, *see Russoniello* v. *Olagues*, 55 U.S.L.W. 3712, 107 S.Ct. 1885 (1987) (granting certiorari), but the Court later vacated the judgment of the court of appeals when the case became moot. *See* 56 U.S.L.W. 3241, 108 S.Ct. 52 (1987) (vacating judgment and remanding to court of appeals for dismissal as moot). This case presents the same significant issue, which is one on which the federal courts of appeals are now deeply divided. Review by this Court is therefore clearly warranted.

1. *Russoniello* v. *Olagues*, *supra*, arose as a class action against federal and state officials involved in a voting registration fraud investigation. Plaintiffs were a Hispanic-American citizen randomly selected for investigation and certain organizations that promote voting rights of Hispanic and Chinese Americans in the San Francisco area. Plaintiffs alleged that the investigation interfered with their statutorily protected right to vote, discriminated against them on the basis of race and national origin, and deterred the exercise of their First Amendment right to freedom of association. *See Olagues* v. *Russoniello*, 797 F.2d 1511 (9th Cir. 1986) (*en banc*), *cert. granted*, 55 U.S.L.W. 3712, 107 S.Ct. 1885 (1987), *vacated and remanded*, 56 U.S.L.W. 3241, 108 S.Ct. 52 (1987). They sought injunctive, declaratory and monetary relief. The district court dismissed the complaint, holding "that, 'as a matter of law', it lacked 'jurisdiction to enjoin or otherwise control' [a preliminary investigation of the U.S. Attorney's Office]." *Id.* at 1519. It addressed plaintiffs' request for declaratory relief on the merits and ruled in the government's favor both on that issue and with regard to monetary relief.

The Ninth Circuit, sitting *en banc*, reversed. It held that plaintiffs had standing to raise their claims, that

the district court had jurisdiction to enjoin the investigation, and that the case should be remanded for the district court to determine whether an injunction should issue. Like the district court, the Ninth Circuit also addressed the prayer for declaratory relief on the merits, but it ruled that the voter fraud investigation directed toward foreign-born, recently registered voters requesting bilingual ballots burdened plaintiffs' fundamental right to vote and interfered with their right of association. Thus, confronted with a pre-indictment request for civil injunctive and declaratory relief from an allegedly unconstitutional investigation, the Ninth Circuit ruled that such an action could properly go forward. Even the dissenting judges argued only that injunctive relief would be improper on the facts alleged, not that it was altogether foreclosed—as the D.C. Circuit subsequently held.

In its subsequent petition for a writ of certiorari, the United States characterized the issue raised as "whether a federal court has authority under Article III of the Constitution to consider a pre-indictment challenge to the manner and scope of noncoercive, criminal investigative activities by a United States Attorney," Petition of the United States for Certiorari in No. 86-1217 at 11, and if so, when it may exercise that authority. *Id.* The Solicitor General explained: "Because of the recurrent nature of those issues and their critical significance to both general principles of separation of powers and the effective operation of the federal criminal justice system, this Court's review is warranted." *Id.* at 11-12. As noted above, this Court granted certiorari but later vacated that order when the case became moot. As the Solicitor General stated, the issue presented by *Russoniello*, like that presented by this case, is a recurrent and significant one in need of resolution by this Court.

Moreover, the Ninth Circuit holding that litigants may challenge the constitutionality of a federal criminal *investigation* before, and regardless of the likelihood of,

any indictment, squarely conflicts with that of the D.C. Circuit, which held that litigants are *absolutely* prohibited from challenging the constitutionality of a federal criminal investigation prior to any indictment.

The more recent decision of the Eleventh Circuit in *Smith* v. *Meese*, 821 F.2d 1484 (11th Cir. 1987), also conflicts with the D.C. Circuit's ruling. In *Smith*, the court of appeals expressly followed the *en banc* Ninth Circuit ruling in *Olagues* v. *Russoniello*, *supra*, and reversed the district court's dismissal of a complaint for injunctive relief from unconstitutional criminal investigations conducted by federal law enforcement officers.

Plaintiffs in *Smith*, black voters and elected officials, had alleged that the Department of Justice was "engaged in a concerted and unlawful effort both to interfere with black citizens' associational and political activities in Alabama's 'Black Belt' and to discourage them from exercising their right to vote, . . ." *Id.* at 1486. The district court dismissed the case on the ground that the separation of powers doctrine precludes federal court review of the Justice Department's investigative activities, and on the additional ground that plaintiffs lacked standing to maintain the action.

The court of appeals reversed. It recognized that plaintiffs were not, and were not expected to be, targets of an investigation or prosecution; rather, the court observed, plaintiffs challenged "a policy and pattern of investigative and prosecutory decisions," *id.* at 1489, which they claimed deprived them of their constitutional right to vote and associate freely. The court of appeals rejected the claim that separation of powers principles absolutely bar federal court intervention in the prosecutorial and investigative process, holding that the judicial branch has "the power and the obligation to redress" a constitutional violation when the other branches fail in that duty. *Id.* at 1493. The court also held that plain-

tiffs had standing to contest allegedly unconstitutional prosecution policies, even though plaintiffs were not themselves current or likely future targets of discriminatory prosecutions and investigations. Citing the Ninth Circuit's decision in *Olagues* v. *Russoniello*, *supra*, for the proposition that a "direct target" of an unconstitutional investigation or prosecution has standing to attack the violation, *id.* at 1493 (citing *Olagues* v. *Russoniello*, 797 F.2d at 1517-18), the court held that the non-target plaintiffs in *Smith* also had alleged sufficient injury to have standing. The court remanded the case for further proceedings.[2]

2. In *Olagues* and *Smith* the courts of appeals each ruled that allegations of injury arising out of an unconstitutional federal criminal investigation suffice to permit plaintiffs to seek declaratory and injunctive relief, even if plaintiffs have not yet been, and might not ever be, indicted. These rulings take as a given that a remedy for any subsequent indictment would not adequately also remedy the injury resulting from an unconstitutional investigation. In *Deaver* and *North*, the D.C. Circuit ruled expressly to the contrary, holding that plaintiffs subject to an unconstitutional federal criminal investigation cannot seek declaratory and injunctive relief from any injury arising out of that investigation, other than indictment. Under this ruling, the *Olagues* and *Smith* actions would have been barred, because plaintiffs there were not yet indicted. The conflict between the rulings is indisputable.

At issue in each of these cases is the extent, if any, of judicial relief available from unconstitutional federal criminal investigations that may or may not lead to indictments. While the courts address the issue under

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[2] To counsel's knowledge, the United States has not yet decided whether to seek certiorari in the *Smith* case. If it does, and if certiorari is granted, petitioner respectfully requests that this case and that one be considered together.

various headings, including separation of powers, standing, ripeness, and equitable discretion, the core issue is always the same: whether a citizen has a right to injunctive or declaratory relief from an unconstitutional federal criminal investigation, or whether prosecutors—including those who are alleged to exercise no lawful authority whatsoever—have absolutely free rein to investigate citizens in violation of the Constitution and laws of the United States, subject only to dismissal of any indictment subsequently brought. The absolute, "hands-off" ruling of the D.C. Circuit—which completely forecloses any effort to seek injunctive or declaratory relief from an unlawful investigation—is unprecedented, and is in conflict with the reasoning and result of the Ninth and Eleventh Circuit decisions. Review by this Court is therefore clearly warranted.

II. The Decision of the D.C. Circuit Conflicts With This Court's Decision in *Steffel* v. *Thompson* and Radically Expands the *Younger* Doctrine of Equitable Restraint.

The D.C. Circuit's unprecedented holding—that there can be no occasion warranting declaratory or injunctive relief from any federal criminal investigative activities—conflicts with this Court's ruling in *Steffel* v. *Thompson*, 415 U.S. 452 (1974) and radically restricts the availability of declaratory and injunctive relief from unlawful actions by federal officials. The result of the decision is to transform the longstanding policy against federal injunctive relief from pending state prosecutions into a prohibition on federal declaratory or injunctive relief from federal prosecutions or investigations. This extraordinary transformation and expansion of the doctrine of equitable restraint cannot stand absent review by this Court.

In defining the proper relationship between federal and state courts, this Court in recent years has cautioned restraint in federal court interference, through

injunctive relief, with pending state criminal prosecutions. In *Younger* v. *Harris*, 401 U.S. 37 (1971), this Court outlined "[t]he precise reasons for [the] long-standing public policy against *federal* court interference with *state* court proceedings." *Id.* at 43 (emphasis supplied). The first reason cited was the basic principle of equity jurisprudence. But the Court then noted that "an even more vital consideration, the notion of 'comity,'" *id.* at 44, is involved when federal courts are asked to enjoin proceedings in state court. This key principle, which rests on the premise that "National Government will fare best if the states and their institutions are left free to perform their separate functions in their separate ways," *id.*, led this Court to conclude that a federal court will not enjoin pending state proceedings unless "the threat to the plaintiff's federally protected rights [is] one that cannot be eliminated by his defense against a single criminal prosecution." *Id.* at 46. *See also Samuels* v. *Mackell*, 401 U.S. 66 (1971) (same principles preclude declaratory relief from pending state court actions).

The doctrine of equitable restraint fashioned in *Younger* was not, however, a flat prohibition. While the *Younger* Court ruled that the "cost, anxiety, and inconvenience" of having to defend against a single prosecution alone do not constitute irreparable injury warranting relief, *id.* at 46, it also held that injunctive relief might be appropriate in exceptional circumstances—where, for example, there is a showing of bad faith, or of harassment, or where the state law at issue is flagrantly unconstitutional, or where other "extraordinary" circumstances exist. *Id.* at 53. Since *Younger*, this Court has largely left open the scope of the exception for the "other extraordinary circumstances" in which federal court intervention with pending state proceedings would be appropriate. But no case has suggested that *Younger* absolutely precludes all declaratory and injunctive relief, even from pending state court proceedings.

Shortly after the decision in *Younger*, this Court made clear that the *Younger* proscription would not operate to bar a federal court from granting declaratory relief when a state prosecution has been threatened but is not pending, even in the absence of bad faith or other special circumstances. In *Steffel* v. *Thompson*, 415 U.S. 452 (1974), this Court observed that "different considerations" animate the decisions whether to grant declaratory and injunctive relief, *id.* at 469, and that the concerns for equity, comity, and federalism that underlay the *Younger* holding " 'have little force in the absence of a pending state proceeding,' " *id.* at 462 (quoting *Lake Carriers' Assn.* v. *MacMullan*, 406 U.S. 498, 509 (1972)). Under *Steffel*, where declaratory relief is sought, and where there is no state prosecution pending, the *Younger* rules do not apply and a plaintiff need not demonstrate irreparable injury in order to be eligible for declaratory relief.

As *Younger* and *Steffel* make clear, this Court has long sought to establish a proper and workable balance between concerns for comity and federalism on the one hand and, on the other hand, the need to provide litigants with a federal forum to pursue constitutional claims. When principles of comity and federalism are seriously implicated—as where a state court action *already* is underway—the goal of providing a federal forum yields in significant but not absolute part to those principles. But the balance does not always tip in that direction. *Younger* and *Steffel* draw a clear line between injunctive and declaratory relief, between pending and anticipated proceedings, and between state and federal proceedings. They strongly suggest that the goal of providing a federal forum requires a new balance, and most likely a different result, when the proceeding at issue—as here—is one for declaratory relief from an anticipated federal action.

The decision of the D.C. Circuit ignores both the distinctions drawn by this Court in the cases discussed and this Court's careful attention to the policies and rights that underlie those distinctions. Instead, in two conclusory and perfunctory paragraphs that give no heed whatsoever to the longstanding policy in favor of a federal forum for constitutional claimants, the D.C. Circuit has transformed a limitation on federal court interference in pending state court proceedings into an absolute bar on federal court intervention with federal criminal investigations prior to indictment.[3] Moreover, the D.C. Circuit did not address the injuries alleged in the complaints or what remedy, if any, is available for injuries not remediable by dismissal of an indictment.

To be sure, in many cases such as *Olagues* v. *Russoniello*, *supra*, and *Smith* v. *Meese*, *supra*, separation of powers concerns, like federalism, provide a counterweight to the presumption that federal courts will provide a federal forum for federal claimants. For that reason, *Olagues* and *Smith* considered (but rejected) the separation of powers in determining whether the judicial branch may consider a constitutional challenge to activities of Executive Officers. In this case, however, like concerns are not implicated, and not surprisingly

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[3] Indeed, when Chief Justice Rehnquist denied Mr. Deaver's application for a stay of the D.C. Circuit's ruling, he certainly did not suggest that federal courts may never interfere with federal criminal investigations. Instead, confronted with a complaint for a temporary restraining order and preliminary injunctive relief from a federal prosecution, he stated that the applicant had not "met th[e] burden" of overcoming the "traditional rule that a court of equity will not enjoin a criminal prosecution" and "the presumption that an Act of Congress is constitutional." *Deaver* v. *Seymour*, No. A-677 (March 18, 1987). Even in the case of *injunctive* relief from a *prosecution*, the Chief Justice saw no absolute bar. Yet the D.C. Circuit now has fashioned such an absolute bar, which extends also to declaratory relief from investigative activities.

the D.C. Circuit invoked no such interests. In a case such as this one, where petitioner's claim is that, through the appointment of an independent counsel, the separation of powers is violated by the congressional *removal* from the Executive of powers constitutionally entrusted to it, it would have been farcical to rely on separation of powers principles to preclude a federal forum. Absent a countervailing interest such as the separation of powers, however, there is simply no warrant for foreclosing a federal forum to petitioner.

Moreover, even were the *Younger* line of cases properly applicable to federal court intervention in federal criminal investigations (because of the analogy between federalism and the separation of powers), this case would constitute one of the "extraordinary" circumstances discussed in *Younger* that allow the action to proceed. For one, the separation of powers concerns that might tilt against intervention in the routine case are lacking here. Second, at issue here is the legality of the independent counsel's investigation as a whole. Petitioner's challenge is not merely to its subject matter (which is not strictly implicated until an indictment), but to any and all actions taken by the independent counsel and his staff under color of law. *Younger* made specific allowance for challenges to bad faith or harassing prosecutions, and that exception must surely encompass a challenge to wholly illegal ones. Third, dismissal of an indictment—the only remedy now offered by existing law in the D.C. Circuit—might adequately void the injury flowing from an indictment, but it would not relieve the very different injury flowing from an unconstitutional investigation. Each day, people with intimate knowledge of petitioner's personal and financial life are compelled to disclose information about petitioner to people with no lawful authority whatsoever—simply put, to people who have no business having compelled access to such private information. Furthermore, according to

the complaints, those people who receive the information are violating grand jury secrecy rules by disclosure of this information to which they do not even properly have access. It simply cannot be that courts must close their eyes to federal criminal investigations that are conducted wholly without authority, and that no remedy exists for a person who, although subject to the extraordinary intrusion of such an investigation, is not indicted. The injury alleged by the petitioner is, therefore, irreparable in light of the D.C. Circuit ruling, as the injury from an indictment is not.[4] Thus, for at least these three reasons, even had the D.C. Circuit merely extended the more flexible *Younger* rule, allowing for exceptions in extraordinary circumstances, to federal proceedings rather than imposing an absolute prohibition on civil relief, this case would have fit within the *Younger* exception and would not have required dismissal.

The decision below, establishing a mandatory rule of equitable restraint *requiring* dismissal of a federal action that seeks declaratory or injunctive relief from a federal criminal investigation, expands *Younger*, conflicts with *Steffel*, and, without sound reasoning or analysis, eliminates a federal forum for a wide and significant range of federal claims. Such a broad and unprecedented ruling must not stand absent review by this Court.

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[4] In *Younger*, where there was no claim that the investigation itself was unlawful, this Court had no occasion to consider whether being subject to an unlawful criminal investigation constitutes irreparable injury. The D.C. Circuit erroneously assumes such a holding and premises its entire ruling on such an error.

CONCLUSION

For the foregoing reasons, the writ should be granted.

Respectfully submitted,

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